

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

CHRISTOPHER M. JUSTICE #2065124 §

v. § CIVIL ACTION NO. 5:17cv134

TEXAS DEPARTMENT OF CRIMINAL §
JUSTICE

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

The Plaintiff Christopher Justice filed this civil rights lawsuit under 42 U.S.C. § 1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Plaintiff complains he has been fed sack lunches for every meal over a period of four to five weeks, instead of three hot meals a day as he claims is required by state and federal law, resulting in “malnourishment.” He also asserts the ventilation in the building is inadequate.

The Magistrate Judge determined Plaintiff has previously filed at least three lawsuits or appeals which were dismissed as frivolous or for failure to state a claim upon which relief may be granted. Docket No. 4 at 3. Consequently, the Magistrate Judge stated Plaintiff could not proceed under the *in forma pauperis* statute unless he showed he was in imminent danger of serious physical injury as of the time of the filing of the lawsuit. *Id.* (citing 28 U.S.C. § 1915(g); *Baños v. O’Guin*, 144 F.3d 883, 885 (5th Cir. 1998)).

After reviewing the pleadings, the Magistrate Judge concluded Plaintiff did not pay the full filing fee and did not show he was in imminent danger of serious physical injury as of the filing of

the lawsuit. The Magistrate Judge therefore concluded Plaintiff's lawsuit is barred by the three-strike provision of 28 U.S.C. § 1915(g).

Plaintiff received a copy of the Magistrate Judge's Report on August 1, 2017, but filed no objections. Accordingly, he is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law"). It is accordingly

ORDERED the Report of the Magistrate Judge (Docket No. 4) is **ADOPTED** as the opinion of the District Court. It is further

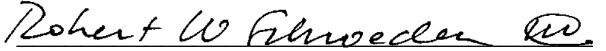
ORDERED the Plaintiff's application for leave to proceed *in forma pauperis* (Docket No. 2) is **DENIED** and the above-styled civil action is **DISMISSED WITH PREJUDICE** as to the refiling of another *in forma pauperis* lawsuit raising the same claims as presented herein, but is denied without prejudice to the refiling of this lawsuit without seeking *in forma pauperis* status and upon payment of the full statutory filing fee. It is further

ORDERED if the Plaintiff pays the full filing fee within 15 days after the date of entry of final judgment in this case, he shall be allowed to proceed in the lawsuit as though the full fee had been paid from the outset. Because Justice is ineligible to proceed *in forma pauperis*, the full filing

fee is \$400.00. Payment of the full filing fee will not affect a frivolousness analysis nor the requirement of exhaustion of administrative remedies. It is further

ORDERED any and all motions which may be pending in this civil action are hereby **DENIED**.

SIGNED this 19th day of September, 2017.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE